

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

DEPARTMENT: Financial Services

AGENDA DATE: December 11, 2012

CONTACT PERSON NAME AND PHONE NUMBER: Carmen Arrieta-Candelaria, CFO, (915) 541-4011

DISTRICT(S) AFFECTED: ALL

SUBJECT:

APPROVE a resolution / ordinance / lease to do what? **OR AUTHORIZE** the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.

An Ordinance amending Title 3 (Revenue and Finance) Chapter 3.12 (Hotel Room Tax) of the El Paso City Code by amending Section 3.12.010 (Definitions) and adding criminal and other penalties for violations. (All Districts) [Carmen Arrieta-Candelaria, Financial Services Department (915) 541-4011]

BACKGROUND / DISCUSSION:

Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?

This ordinance amends Title 3.12, Hotel Room Tax, of the El Paso City Code to add the following provisions to the code:

- 1) Allows the City to perform an audit or contract with another person to perform an audit.
- 2) Violations of the code result in a Class C misdemeanor and shall be fined an amount not to exceed five hundred dollars (\$500.00) for each offense.
- 3) Allows the City to bring suit against persons that fail to file a tax report or pay the tax when due. In addition, this ordinance allows the City to enjoin the person from operating a hotel until the tax is paid or the report filed.
 - a. In addition to the amount of any tax owed, the person would be liable for city's reasonable attorney fees, costs of an audit and a penalty equal to 15% of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter.

PRIOR COUNCIL ACTION:

Has the Council previously considered this item or a closely related one?

N/A

AMOUNT AND SOURCE OF FUNDING:

How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?

N/A

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

CITY CLERK DEPT.
2012 DEC -5 PM 3:25

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

Carmen Arrieta-Candelaria

(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

ORDINANCE NO. _____

AN ORDINANCE AMENDING TITLE 3 (REVENUE AND FINANCE) CHAPTER 3.12 (HOTEL ROOM TAX) OF THE EL PASO CITY CODE BY AMENDING SECTION 3.12.010 (DEFINITIONS) AND ADDING CRIMINAL AND OTHER PENALTIES FOR VIOLATIONS

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT, Title 3 (Revenue and Finance) Chapter 3.12 (Hotel Room Tax) is amended as follows:

1. Section 3.12.10 is amended to read:

C. "Hotel" means a building in which members of the public obtain sleeping accommodations for consideration. The term includes a hotel, motel, tourist home, tourist house, tourist court, lodging house, inn, rooming house or bed and breakfast but does not include a hospital, sanitarium, nursing home or a dormitory or other housing facility owned or leased and operated by an institution of higher learning as those terms are defined in Section 61.003, Texas Education Code, used by the institution for the purpose of providing sleeping accommodations for persons engaged in an education program or activity at the institution.

D. "Occupancy" means the use or possession or the right to use or possess a hotel room or space that is ordinarily used for sleeping.

E. "Occupant" means any person who under a lease, concession, permit, right of access, license, contract or agreement uses or possesses a hotel room or space, but shall not include a person who has the right to use or possess a room in a hotel for at least 30 consecutive days, so long as there is no interruption of payment for the period.

2. Section 3.12.050 is amended to add the following provision:

D. The city may directly perform an audit or contract with another person to

perform the audit on an hourly rate or fixed-fee basis. The city shall provide at least 30 days' written notice to a person who is required to collect the tax with respect to a hotel before conducting an audit of the collection and payment of the hotel occupancy tax. The city shall notify and submit to the state comptroller a copy of the audit if the city obtains documentation or information showing a failure to collect or pay the state hotel occupancy tax when due. The authority to conduct an audit under this chapter is in addition to any other audit authority the city may have.

3. Section 3.12.070 is amended to read:

3.12.070 Violation – Penalty

- A. Any person who violates any of the provisions of this chapter shall be guilty of a Class C misdemeanor and upon conviction thereof shall be fined an amount not to exceed five hundred dollars (\$500.00) for each offense. Each day that a violation is permitted to exist shall constitute a separate offense.
- B. If any person shall fail to (1) collect the tax imposed by this chapter; (2) file a report as required in this chapter when due; or (3) pay to the city comptroller the tax as imposed in this chapter when the payment is due; or (4) fails to comply with Sec. 351.0041, Texas Government Code, when purchasing a hotel; or if any person files a false report, the person shall forfeit five percent (5%) of the amount due as a penalty, and after the first thirty days he shall forfeit an additional five percent (5%) of such tax, provided, however, that the penalty shall never be less than one dollar. Delinquent taxes shall draw interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due.
- C. The city may bring suit against the person who is required to collect the tax and pay the collections to the city and who has failed to file a tax report or pay the tax when due. The city may also bring suit to enjoin the person from operating a hotel until the tax is paid or the report filed. In addition to the amount of any tax owed, the person is liable to the city for:
 - (1) the city's reasonable attorney's fees incurred in enforcing this chapter and in collecting any tax owed by the person, and

(2) the costs of an audit conducted under this chapter as determined by the city using a reasonable rate, but only if (a) the tax has been delinquent for at least two complete city fiscal quarters at the time the audit is conducted, and (b) the city has not received a disbursement from the state comptroller related to the person's concurrent state tax delinquency; and

(3) a penalty equal to fifteen (15%) of the total amount of the tax owed if the tax has been delinquent for at least one complete municipal fiscal quarter.

PASSED AND APPROVED this _____ day of _____, 2012.

John F. Cook
Mayor

ATTEST:

Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

Bertha A. Ontiveros
Bertha A. Ontiveros
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Carmen Arrieta-Candelaria
Carmen Arrieta-Candelaria
Chief Financial Officer